

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIM EDWARD ROGERS,

Plaintiff,

v.

ROB BONTA, et al.,

Defendants.

No. 2:22-cv-314-TLN-KJN PS

ORDER

In February of 2022, plaintiff, who is proceeding without counsel, filed claims against defendant Rob Bonta and an unnamed officer of the California Attorney General's office (among others). The court found potential claims in screening, granted plaintiff's motion to proceed without prepayment of the filing fee, and ordered service on defendant Bonta. (ECF No. 3.) On June 22, 2022, defendant Bonta filed a motion to dismiss, setting the matter for a July 26 hearing before the undersigned.¹ (ECF No. 18.) Under the court's Local Rules, plaintiff was obligated to respond to defendant's motion at least fourteen days after the motion was filed: or July 6, 2022. See E.D. Cal. L.R. 230(c) ("Opposition, if any, to the granting of the motion shall be in writing and shall be filed and served no later than fourteen (14) days after the motion was filed."). A review of the court's docket reveals plaintiff failed to respond by the deadline.

¹ This action proceeds before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and E.D. Cal. Local Rule 302(c)(21).

1 “Failure of counsel or of a party to comply with these Rules or with any order of the Court
2 may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule
3 or within the inherent power of the Court.” E.D. Cal. Local Rule 110. Moreover, Local Rule
4 183(a) provides in relevant part:

5 Any individual representing himself or herself without an attorney
6 is bound by the Federal Rules of Civil or Criminal Procedure, these
7 Rules, and all other applicable law. All obligations placed on
8 “counsel” by these Rules apply to individuals appearing [without
counsel]. Failure to comply therewith may be ground for dismissal,
judgment by default, or any other sanction appropriate under these
Rules.

9 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
10 same rules of procedure that govern other litigants”) (overruled on other grounds). A district
11 court may impose sanctions, including involuntary dismissal of a plaintiff’s case under Federal
12 Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to
13 comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local rules.
14 See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act sua
15 sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.
16 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action
17 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute
18 or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52,
19 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground
20 for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal
21 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with
22 any order of the court”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir.
23 1986) (per curiam) (stating that district courts have inherent power to control their dockets and
24 may impose sanctions including dismissal or default); see also, e.g., Trice v. Clark County Sch.
25 Dist., 376 Fed. App’x. 789, 790 (9th Cir. 2010) (noting that under certain circumstances a district
26 court does not abuse its discretion by dismissing a plaintiff’s case pursuant to Federal Rule of
27 Civil Procedure 41(b) for failing to file an opposition to a motion to dismiss).

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1 Plaintiff's failure to file opposition to the pending motion is in violation of Local Rule
2 230(c), per Local Rules 110 and 183(a), and indicates to the court that plaintiff may be consenting
3 to the dismissal of his case. See Local Rule 230(c) ("A failure to file a timely opposition may
4 also be construed by the Court as a non-opposition to the motion."). Thus, plaintiff's claims are
5 subject to dismissal. However, given plaintiff is proceeding without counsel, the court will not
6 recommend dismissal at this time. Instead, the court provides one final opportunity for plaintiff
7 to respond to the pending motion. Any further failure to respond will be construed as non-
8 opposition and will constitute additional grounds for dismissal under Rule 41(b).

9 Further, Local Rule 230(c) states "[n]o party will be entitled to be heard in opposition to a
10 motion at oral arguments if opposition to the motion has not been timely filed by that party. . . ."
11 Accordingly, the hearing on the motion is vacated, and after the expiration of the deadlines
12 below, the court will decide the motion on the record and written briefing only.

13 Finally, it appears plaintiff refiled a motion for summary judgment, just prior to when
14 defendant's motion to dismiss was filed. (ECF No. 15.) The court has administratively denied
15 this motion once before as premature. (See ECF Nos. 12, 13.) This second motion for summary
16 judgement is similarly denied without prejudice as premature. Plaintiff shall cease refileing this
17 motion, and continued filings may be deemed vexatious, sanctionable conduct.

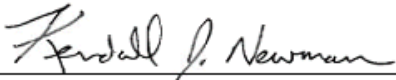
18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The July 26, 2022, hearing on defendant's motion (ECF No. 18) is VACATED;
- 20 2. Plaintiff shall file a written opposition (or a statement of non-opposition) to the
21 motion to dismiss on or before July 26, 2022. Failure to do so will be deemed a
22 statement of non-opposition and consent to the granting of the motion, and may
23 constitute an additional ground for the imposition of appropriate sanctions,
24 including a recommendation that plaintiff's entire case be involuntarily dismissed
25 with prejudice pursuant to Federal Rule of Civil Procedure 41(b);
- 26 3. Defendant may file a written reply to plaintiff's opposition within one week of
27 plaintiff's opposition. The court will take the matter under submission after this
28 date. If after reviewing the submissions the court determines a hearing is

necessary, the court will notify the parties and set an appropriate date. See Local Rule 230(g); and

4. Plaintiff's successive motion for summary judgement (ECF No. 15) is DENIED WITHOUT PREJUDICE.

Dated: July 13, 2022


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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